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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,726	06/30/2006	Mark C. Poznansky	62063(51588)	1191

71284 7590 06/26/2008  
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EXAMINER

ROOKE, AGNES BEATA

ART UNIT

PAPER NUMBER

1656

MAIL DATE

DELIVERY MODE

06/26/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/563,726

**Applicant(s)**

POZNANSKY ET AL.

**Examiner**

AGNES B. ROOKE

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 10-17 and 29-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29-44 is/are allowed.
- 6) ☒ Claim(s) 1 and 12-17 is/are rejected.
- 7) ☒ Claim(s) 10 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This FINAL office action is in response to the paper filed on 03/17/2008. The amendments to the claims are acknowledged.

#### ***Status of Claims***

Claims 1, 10-17 and 29-44 are pending and under consideration. Claims 2-9, 18-28, and 45-124 are cancelled.

#### ***Objections Withdrawn***

All objections to the specification are withdrawn in view of the amendments submitted on 03/17/2008.

All objections to the claims are withdrawn in view of the amendments to the claims or cancellation of the claims.

#### ***New Objection***

Claims 10-17 are objected to because they are no further limiting claim 1 as amended because claim 1 reads on compositions of SEQ ID NO:3 or SEQ ID NO:47 or any fragment of SEQ ID NO:3 that has HSP activity due to the language "an isolated HSP of SEQ ID NO:3" with a carrier. However, none of those limitations in claim 1 leave room for adding signal or secretory sequences, so claims 10-11 are not further limiting and make claim 1 unclear. Further, it is also unclear how claims 12-17 further limit claim 1 drawn to exact sequences or fragments.

Claim 12 is objected to because claim 12 does not further limit claim 1 because stressed cells and non-stressed cell combined together represent all cells.

***Rejections Withdrawn***

The rejection of claims 29-44 under 35 USC 112, second paragraph, is withdrawn in view of the amendments to the claims.

The rejections of claims 1-17 and 29-44 under 35 USC 112, first paragraph written description and enablement requirement are withdrawn in view of the amendments to the claims or cancellation of the claims.

The rejection of claims 2-7 and 9 under 35 USC 102(b) is withdrawn in view of the cancellation of the claims.

***Rejections Maintained***

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

The rejection of claim 12 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is maintained.

Claim 12 is indefinite because it is not clear what is defined by "a stressed or a non-stressed cell" thus further characterization is the claim is required.

Applicants responded that claim 1 has been amended to specify the elected species of SEQ ID NO:3, and because claim 12 is dependent from claim 1, claim 12 is not indefinite.

Examiner disagrees and states that the definition of "a stressed or a non-stressed cell" is still not provided, thus the claim is indefinite. Further, it is not clear from the state of the prior art what is a stressed cell and what is a non-stressed cell. Thus, clarification of these terms is necessary.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The rejection of amended claim 1 and claims 12-17, in view of the amendment to claim 1, under 35 U.S.C. 102(b) as being anticipated by Srivastava, WO/52791 (07/2001) is maintained.

Srivastava teaches pharmaceutical compositions comprising peptide-binding fragments of heat shock proteins (HSPs) and non-covalent complexes of peptide-binding fragments of HSPs. See Abstract.

Specifically in Claim 50, on page 80, and the sequence listing on pages 10-12 of the specification, Srivastava teaches SEQ ID NO:5 (732 amino acids long polypeptide), that has 100% identity to the instant SEQ ID NO:3. (see instant claim 1).

Although, the reference does not teach the fugetactic activity per se, it would be the inherent property of SEQ ID NO:5 (an HSP90 protein) to promote fugetactic activity because the SEQ ID NO:5 is identical to the instant SEQ ID NO:3.

In addition, in claim 1, the SEQ ID NO:47 is referred in the alternative only.

Claims 12-17 are included in this rejection (see also objection of claims 12-17 in view of the claims' language) because claims 12-17 do not further limit claim 1 that is drawn to exact sequences since SEQ ID NO:3 occurs naturally in these places, For example.

### ***Conclusion***

#### **Disposition of claims:**

Claims 1 and 12-17 are rejected.

Claims 10-11 are objected to because they are not further limiting claim 1.

Claim 29-44 are allowable because the prior art does not teach a method of promoting fugetaxis of migratory cells where the SEQ ID NO:3 or SEQ ID NO:47 is administered in an amount effective to promote fugetaxis of migratory cells away from a specific site in a subject. For instance, current state of the prior art teaches that HSP based chaperone system is involved in targeted movement of signaling proteins along microtubule tracts, binding TPR proteins, and binding other variety of signaling proteins

in mammals and plants. However, there is no teaching regarding fugetaxis by SEQ ID NO:3 or its fragments or HSPs, generally.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Agnes Rooke whose telephone number is 571-272-2055. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen Kerr Bragdon can be reached on 571-273-0931. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

AR

/Kathleen Kerr Bragdon/

Supervisory Patent Examiner, Art Unit 1656